

WATER RIGHTS

February 2009

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Division of Water Rights

Mission:

“Our Mission is to establish and maintain a stable system of water rights in California to best develop, conserve and utilize in the public interest the water resources of the State while protecting vested rights, water quality and the environment.”

Vocabulary

- **Appropriation:** Diversion of water for immediate use on non-riparian property or storing it for later use.
- **License:** A certificate issued to confer a vested water right under certain conditions.
- **Permit:** A certificate issued to someone who is seeking to develop a water supply permit approval to do so within certain conditions.
- **Public Trust:** The right of the state to protect the public interest in navigation, commerce, and fishing of navigable waters and their tributaries, and, more recently, to a broader range of values.
- **Riparian:** Adjacent to a stream. A riparian right is a water right that allows the use of water from a stream on its riparian land.
- **Usufruct:** A right to the use of something, but not the ownership of the item.

Division Functions

- Permits new appropriations of surface and subterranean streams and changes to existing permits/licenses.
- Records claims of water rights not under the State Boards' permitting authority ("grandfathered rights").
- **Enforcement against:**
 - Illegal diversions
 - Permit term violations
 - Waste and unreasonable use of water and unreasonable methods of diversion
 - Violations of the public trust.
- **Adjudication:**
 - Assisting the Board in the resolution of water right disputes
 - Assisting the courts in: (1) the resolution of water right disputes or (2) the determination of "grandfathered" water rights.

Division Functions

- **Water Quality**
 - Bay Delta Planning
 - Water Quality Certifications for water diversion projects

General Policies

- Water belongs to the people of the State
- A water right is a “usufruct”
- Beneficial use of water shall be maximized
- Water shall be conserved
- Water use must be reasonable

History: The Evolution of Water Rights

- **1848:** Treaty of Guadalupe Hidalgo recognizes pre-existing Spanish/Mexican water rights.
- **1840-1850:** Nonstatutory appropriations begin consistent with mining law (simply divert water put it to beneficial use).
- **1850:** California adopted English Common Law.
- **1872:** Civil Code section enacted allowing (but not requiring) appropriators record claims.
- **1886:** Supreme Court held that the riparian doctrine had been adopted by state as part of English Common Law.

History (cont.)

- **1914:** Water Commission Act adopted setting up a state administrative water right permitting system as the exclusive way to acquire water right.
- **1928:** Constitutional amendment passed requiring all water use to be reasonable and beneficial.
- **1967:** State Water Resources Control Board formed from former Water Rights and Water Quality Boards (including Regional Boards).
- **1982:** State Board has continuing authority over previously issued water right licenses and must protect the public trust “where feasible.” (“Mono Lake” or “Audubon” decision)
- **1986:** State Board has authority under the “public trust” and “reasonableness” doctrines to apply water quality objectives. (“Racanelli” decision)

History (cont.)

- **1988:** State Board has authority to apply public trust doctrine under all bases of water rights. (“Hallett Creek” decision)
- **1990:** State Board has jurisdiction to apply the “reasonableness” doctrine to all water rights, including those over which it has no permitting authority. (“Imperial Irrigation District” decision)
- **2006:** State Board must take public trust into account in planning and allocating water resources. (“Robie” decision)
- **2006:** State Board cannot assign responsibility for meeting water quality objectives in a manner that undermines water right priorities without substantial justification for doing so. (“El Dorado ID” decision)

Risk Management

- Issuance of any water right permit reduces the availability of water supply for instream uses including dilution of pollutants.
- **Ultimate question:** Is the public interest in the water supply sought or obtained under the water right sufficient to justify the risk to water quality, the environment, and other water users.
- **Difficulties:** Water supply varies from year-to-year and so does the quantity of water used. The quantity diverted and used is not known. The State Water Board has permitting authority for only some diversions and extractions, and they tend to be the water rights with the lowest priority. Environmental needs are not well-understood.

Roles

- **State Board:** Sole administrative authority over water rights (no federal or local authority exists). Approves Water Quality Control Plans, which may include flow objectives under STATE law.
- **Regional Boards:** Sets water quality objectives in basin plans.
- **Division Chief:** Most day-to-day water right activities are delegated to the Division Chief. Exceptions are:
 - Conducting hearings in response to enforcement actions and on permits on “major” water supply projects.
 - Issuing orders on “temporary water right permits” if there are outstanding objections to the permit being issued.
- **Division Staff:** Some activities are delegated to lower level staff by the Division Chief.